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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

LUKE D. BRUGNARA,)

Defendant.)

NO. CR 08-0222 WHA

NO. CR 14-0306 WHA

San Francisco, California

Tuesday

March 24, 2015

9:00 A.M.

EXCERPT OF TRANSCRIPT OF PROCEEDINGSUNSEALED PORTION - PAGES 1 THROUGH 4 AND 31 THROUGH 84APPEARANCES:**For Plaintiff:**

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BY:**JAMES STEVENS, ESQ.****ALSO PRESENT:****GEORGE BOISSEAU, ESQ.***Reported By: Kelly Lee Polvi, CSR No. 6389, RMR, FCRR*

P R O C E E D I N G S

MARCH 24, 2015

9:03 A.M.

THE CLERK: Calling criminal No. CR 08-0222 and CR 14-0306. They're both United States versus Luke D. Brugnara, on for status and motion hearing.

Counsel, please state your appearances.

MR. KINGSLEY: Good morning, Your Honor, Ben Kingsley for the United States.

THE COURT: Welcome.

MR. BORNSTEIN: Good morning, Your Honor, Jeff Bornstein. We're waiting for Mr. Brugnara to come in.

THE COURT: Welcome.

MR. STEVENS: Good morning, Your Honor, James Stevens, also representing Mr. Brugnara.

THE COURT: And welcome to you.

MR. BORNSTEIN: Your Honor, he's now walking in the courtroom; he's present, in custody, Your Honor.

THE COURT: All right. The record will show that Mr. Brugnara is present. All right.

We're here on several things; first is the motion of Erik Babcock to withdraw.

Anything further to be said on that subject?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right.

Mr. Bornstein, is this something we have to clear the

1 courtroom to hear?

2 **MR. BORNSTEIN:** I would think that if Mr. Brugnara wants
3 to talk, then I would ask you to do that.

4 **THE COURT:** All right.

5 **MR. KINGSLEY:** Your Honor?

6 **THE COURT:** Yes, sir.

7 **MR. KINGSLEY:** The Government, based on the public
8 record, Mr. Babcock has a conflict. And every time we have an
9 ex parte hearing, Mr. Brugnara appears to raise things that
10 don't really need to be done ex parte and when the Government
11 comes back in the tenor of the hearing has changed
12 substantially.

13 I'm not sure -- obviously, I haven't been here for the ex
14 parte hearings, but I think Mr. Babcock has a conflict.
15 Mr. Babcock thinks he has a conflict. It doesn't really have
16 anything to do with Mr. Brugnara's thoughts on it at this
17 point.

18 **THE COURT:** Possibly that's true, but I would not want
19 somebody later on, in the Court of Appeals, to think that we
20 didn't hear Mr. Brugnara out on this.

21 So you would raise a fair point, and it is, in my
22 opinion, true that things that should not be raised ex parte
23 have been raised ex parte. And I try to cut it off
24 immediately, but you understand the dynamic that we're dealing
25 with.

1 All right.

2 So we'll hear -- I'm going to hear Mr. Brugnara out in a
3 minute, but before we go there, let's go to Mr. Bornstein.

4 You have a motion to withdraw.

5 **MR. BORNSTEIN:** That's correct, Your Honor.

6 **THE COURT:** And is that still an active motion that you
7 wish to have heard?

8 **MR. BORNSTEIN:** Yes, I do.

9 **THE COURT:** All right. Is there anything further that
10 Mr. Brugnara wishes to stay on that the subject?

11 **THE DEFENDANT:** Yes, there is.

12 **THE COURT:** All right. Okay. What we're going to do,
13 then, is to -- I'm going to ask everyone to step outside -- I
14 have to hear Mr. Brugnara in camera -- unless you are
15 affiliated with the Court, and then, in which case, you can
16 stay.

17 (Sealed portion begins)

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1 **THE COURT:** For the record, we'll start a new transcript.

2 The record will show that the Government and members of
3 the public are back in the room.

4 Both motions to withdraw have been granted on the
5 condition that they transition to the new lawyer and assist,
6 and I'm sure that they will.

7 All right. So that now brings us to where we are now.

8 In anticipation that this could happen, the Court has
9 inquired of Mr. George Boisseau, who is on the front --

10 Mr. Boisseau, could you come up here for a moment?

11 **MR. BOISSEAU:** Thank you, Your Honor.

12 **THE COURT:** -- whether or not he would be willing to take
13 on this case.

14 And before you get appointed -- and he hasn't been
15 appointed yet -- Mr. Brugnara, this is George Boisseau. All
16 right? He is a member of the panel under the Criminal Justice
17 Act, one of the foremost trial lawyers in California.

18 He cannot try this case on April 27th.

19 But before you come into the case, let me ask you, have
20 you given some thought to when you could try this case?

21 **MR. BOISSEAU:** Yes, Your Honor, I did. And the date -- I
22 was thinking of July 13th; however, July 6th would work also.

23 **THE COURT:** All right.

24 Mr. Kingsley, is July 6 still a date that will work for
25 the Government?

1 **MR. KINGSLEY:** It still works for the Government, Your
2 Honor.

3 **THE DEFENDANT:** Your Honor, I requested that this Court
4 have a *Faretta* hearing regarding my desire on that and I
5 understood that's why we were here today.

6 And I have already told the Court that I'm prepared to
7 proceed because I cannot give up my April trial date. For
8 numerous reasons.

9 **THE COURT:** Well, you see, the thing is you're putting it
10 in a position where that would not work under *Faretta*. It will
11 not be a voluntary waiver of counsel.

12 What you're trying to say is -- to create a record that
13 says something like, "I wish I could get a lawyer, but since I
14 can't get a lawyer who can try the case on my schedule, I will
15 represent myself. But I'm being forced into this."

16 That's not -- under *Faretta*, you can't do that. So I'm
17 sorry, but I'm not going to go even down the *Faretta* route
18 until I hear you say "Whether I can get a lawyer or not."

19 And it can turn out this: You could go by yourself and I
20 could change the date. I could just change the date. Because
21 there could be good reasons to change the date. Maybe the
22 Government is not available. And under the Speedy Trial Act, I
23 could do that. Then you would be saying that I somehow cheated
24 you by holding out a date and you lost your lawyer and all of
25 that.

1 You can't --

2 **THE DEFENDANT:** Your Honor --

3 **THE COURT:** There's no such thing as a conditional, "I
4 want to go for my -- represent myself so I can keep that date."

5 I'm telling you now, if you fire your lawyer, you may not
6 get that -- you might not even get to trial on July 6th.

7 **THE DEFENDANT:** Your Honor, I understand that it has to
8 be unequivocal and it would be unequivocal for this record.

9 This isn't some sort of gamemanship here.

10 I understand and I've read what Mr. Bornstein gave me
11 about the requirements to go pro se, and based on the fact that
12 you released Mr. Bornstein, it would be unequivocal because
13 Mr. Bornstein is now officially off the case. So that
14 condition is no longer applicable.

15 **THE COURT:** It's my duty to appoint a new lawyer for you
16 unless I hear a completely voluntary desire -- and unequivocal
17 -- to represent yourself, knowing all of the downsides and the
18 consequences and knowing good and well it may not happen on
19 April 27th either.

20 **THE DEFENDANT:** I would like it to happen on April 15th.

21 **THE COURT:** Well, see, that's the point. I'm trying to
22 tell you, if you are trying to get rid of your lawyer so that
23 you can have a prompter trial date, that could be pie in the
24 sky. I can't guarantee you that. It could change. And then I
25 know you well enough to know you would blame me and say, "Well,

1 I got screwed out of my lawyer because the judge changed the
2 trial date on me."

3 **THE DEFENDANT:** Your Honor --

4 **THE COURT:** I'm not going to go down that path until you
5 tell me something like "I'm willing to represent myself, even
6 if the trial -- if I stay in jail all the way until December,"
7 or whenever it is.

8 **THE DEFENDANT:** That's not my interpretation of what
9 Mr. Bornstein gave me. My interpretation of what Mr. Bornstein
10 gave me is that the Court has to honor my rights to a speedy
11 trial and honor the conditions that are currently in front of
12 this Court regarding the trial dates and the pending motions
13 for the trial date.

14 And this Court has already stated, in the hearing last
15 week, that, in fact, if I wanted to go pro se, it would honor
16 the April 27th date.

17 **THE COURT:** I would try to. I would try to.

18 **THE DEFENDANT:** You said that on the record.

19 **THE COURT:** Let's make it clear now. I would try to.
20 "Try" is not a guarantee. I will not guarantee that date for
21 you. The Government could come in and make a motion and say,
22 "We can't be ready," or, "Our witness is in the hospital," or
23 something like that. Then you would be complaining that you
24 didn't get your April 27th trial date.

25 I'm sorry. I can't. All I can do is say "I would try my

1 best."

2 THE DEFENDANT: But the availability of 34 witnesses is a
3 logistical hell.

4 THE COURT: Mr. Brugnara, see, you're arguing with me.

5 THE DEFENDANT: I'm sitting in jail. I've lost a hundred
6 pounds. I'm dying.

7 THE COURT: Your case would have been over if you hadn't
8 absconded. The verdict would have been in. You would either
9 be innocent or you would have been guilty. The case -- you
10 absconded and put yourself in this position.

11 THE DEFENDANT: I didn't abscond.

12 THE COURT: Yes, you did.

13 THE DEFENDANT: I would have been out in July or June if
14 you didn't remove Mr. Kalar.

15 THE COURT: Now we're going in circles. I'm going to
16 order you to be quiet.

17 Here's what we're going to do.

18 THE DEFENDANT: Okay. I'd like to speak with
19 Mr. Boisseau --

20 THE COURT: I'm going to give you that opportunity.

21 THE DEFENDANT: -- for a few minutes before I make a
22 decision. Could I speak to him for 15 minutes?

23 THE COURT: I was going to suggest that very thing.

24 Here's what I would like to do. It's now 9:45. Can we
25 come back at, say, 11:30 or noon and give Mr. Boisseau a chance

1 to meet with his client in the lockup?

2 And would that -- and then you can go over things like
3 *Faretta*, or you can go over the trial schedule.

4 But in my judgment, you could not try this case -- no
5 competent lawyer could be ready to try this case on April 27th.
6 I think you could do it on July 6th, but I don't think you
7 could do it on April 27th.

8 Now. But can we all come back at, say, 11:30 or noon?

9 **MR. BOISSEAU:** Yes.

10 **MR. KINGSLEY:** Yes, Your Honor.

11 **MR. BORNSTEIN:** Yes, if you still want me to come back.

12 **THE COURT:** I may not need you if Mr. Boisseau says he
13 doesn't need you here, but I don't have anyone representing
14 Mr. -- well, I've got Mr. Stevens, but I'd like you to stay on
15 board.

16 Mr. Boisseau, you haven't actually been appointed yet
17 so -- my intention is to appoint you, if you think you can get
18 along with the defendant and if the defendant thinks he can get
19 along with you and after you have your conversation.

20 **MR. BOISSEAU:** I will start with the conversation.

21 **THE COURT:** All right. We're going to -- let's -- can we
22 make it noon? Would that be all right? Or 11:30?

23 Which one works best for the -- either one is okay with
24 me.

25 **MR. STEVENS:** 11:30 would work best for me.

1 **THE COURT:** 11:30 it is. We'll see you back here then.
2 Thank you.

3 (A recess was taken from 9:48 A.M. to 11:36 A.M.)

4 **THE COURT:** Let's go back to work. Please be seated.

5 **THE CLERK:** Okay. For the record, recalling criminal
6 No. CR 08-222 and related case CR 14-306. Both are
7 United States versus Luke D. Brugnara. The matter's on for
8 status conference.

9 Counsel, please state your appearances.

10 **MR. KINGSLEY:** Good morning again, Your Honor, Ben
11 Kingsley for the United States.

12 **MR. BORNSTEIN:** Good morning, Your Honor, I am Jeff
13 Bornstein. I think I am no longer representing Mr. Brugnara,
14 but Mr. Brugnara is present, in custody.

15 **THE COURT:** Thank you.

16 **MR. BOISSEAU:** And George Boisseau, making a special
17 appearance at this point.

18 **THE COURT:** Thank you.

19 So to catch everyone up, we were here earlier this
20 morning, the motion to withdraw by the two prior counsel was
21 granted, and now the Court has gone to a lot of trouble to ask
22 Mr. Boisseau to step in so that if -- but we gave the defendant
23 an opportunity to meet for about 90 minutes with Mr. Boisseau
24 in the lockup.

25 And let me ask, first, was that enough time or do you

1 need more time to meet?

2 **THE DEFENDANT:** For me, Judge, I'll accept that was
3 sufficient time. And I want to thank the Court for making the
4 effort to bring in Mr. Gasteau [as spoken]. However -- and I
5 like him personally. He's very nice man, very smart man, good
6 attorney.

7 But, you know, despite our meeting, I'm prepared to
8 unequivocally waive the right to the appointed counsel to
9 proceed pro se, and that's what I'd like to do.

10 **THE COURT:** All right. Now, before we go down that path,
11 let me ask Mr. Boisseau, since you've been good enough to come
12 a long way for today's hearing, what do you have to say? Or
13 you don't have to say anything. I'm just giving you the
14 opportunity.

15 **MR. BOISSEAU:** No, I spoke -- spoke to him, and I'll
16 defer.

17 **THE COURT:** All right. So in the 90 minutes, I spent
18 part of that trying to figure out what the Government's
19 conflicts were, and the Government says that it has conflicts
20 that would prevent it from going to trial on April 27th.

21 Now, I want to make sure I understand that right.

22 Mr. Kingsley; is that correct?

23 **MR. KINGSLEY:** That's correct. Since the last filing we
24 did on this the case that I had that was supposed to go to
25 trial, the Davis case, Mr. Davis pleaded open last Thursday, so

1 that case has resolved. Otherwise, the stated conflicts in
2 there that Ms. Harris has still exist. The United States
3 versus Murray case is still going to trial.

4 **THE COURT:** Well, which one of you is the lead counsel?

5 **MR. KINGSLEY:** Well, I'm not sure either of us is lead
6 counsel. Ms. Harris is certainly the more senior counsel on
7 the case. But I've been involved in the case for quite some
8 time, as you know.

9 **THE COURT:** Well, are you prepared to try the case on
10 behalf of the Government even without Ms. Harris?

11 **MR. KINGSLEY:** The Government will be prepared to go to
12 trial on April 27th, if that's what the Court feels is
13 appropriate.

14 **THE COURT:** Well, that's a new fact that I didn't know.

15 So you're -- looking at your prior statement, indicated
16 to me that you could not go to trial on April 27th, but now
17 you're telling me you can.

18 **MR. KINGSLEY:** The Government's position before, I think,
19 was that there were conflicts for both Government counsel that
20 would have required the Government to lose some amount of
21 continuity of Government counsel or possibly the entirety of
22 continuity of Government counsel.

23 In addition, the Government was concerned that it would
24 rearrange the schedules of its witnesses, of its attorneys, and
25 reassign this case or other cases to set a trial date that,

1 based on Mr. Bornstein's representations, appeared not likely
2 at all to happen.

3 Since those filings, my conflict no longer exists and so
4 I would be able to continue on this case; Ms. Harris wouldn't.

5 So I think that the continuity issue has been partially
6 resolved but not entirely. The Government still has concerns
7 about, again, reassigning matters either way because Ms. Harris
8 will have a conflict.

9 **THE COURT:** Who would take the case if Ms. Harris drops
10 out?

11 **MR. KINGSLEY:** I believe Mr. Waldinger, who is here.

12 **THE COURT:** Right there.

13 **MR. KINGSLEY:** He snuck up on me.

14 **THE COURT:** So Mr. Waldinger, come forward, please.

15 Is that true, that if we went to trial on April 27th you
16 would step in and be able to try the case?

17 **MR. WALDINGER:** I believe so, Your Honor. I've been
18 trying to rearrange my schedule. We would find somebody.
19 Whether it would be me or somebody else, we would find
20 somebody.

21 **THE COURT:** All right. I have an issue that I would
22 raise, but it's a small one because it may not matter. But at
23 the end of the month of May -- let's see, April 27 would be
24 one, two -- so, like, at the end of the fourth week of this
25 case, if we did start on April 27th, if we had not reached a

1 verdict I would have to adjourn the trial for almost a week for
2 personal reasons.

3 That would be an unfortunate time to do it because we
4 might be in jury deliberations or something. But I can't help
5 it; it's a command performance on my -- that I have to attend
6 to.

7 So let me get the Government's estimate, trial estimate,
8 of time.

9 **MR. KINGSLEY:** What we've said since the escape is that
10 we estimate two to two and a half weeks for our case in chief.
11 I think that four weeks will be plenty of time for the entire
12 trial, though I don't know what Mr. Brugnara would intend to do
13 if he's representing himself.

14 **THE COURT:** Well, I don't know either, and -- I think he
15 would put on some witnesses and we have closing arguments and
16 things like that. Charging conference.

17 **THE DEFENDANT:** Your Honor --

18 **THE COURT:** No, please. Wait. Wait.

19 What I want to -- I want to circle back to what I said
20 earlier today, which is that you should not be going pro se on
21 the theory that you have a guarantee of April 27th. You could
22 only go forward with the idea that the Court would try to make
23 that work.

24 But things can get in the way, witness problems could
25 come up, any number of things could come up that would require

1 a continuance.

2 And it may even -- if you think the continuance should be
3 short, it might -- for other reasons, might wind up being
4 longer.

5 So I just want that to be very clear. That if you did it
6 in order to get an earlier trial date, well, good, God bless
7 you, it might work. But there's no guarantee.

8 Do you understand that?

9 **THE DEFENDANT:** Yes.

10 **THE COURT:** All right. Okay. I -- here's what I propose
11 to do, then. I would like to go through as many things as I
12 can think of to admonish the defendant about with respect to
13 *Faretta*, and -- meaning going pro se, as the defendant puts it,
14 and to see where we are.

15 We got to get through the whole thing and -- before I can
16 decide that I would let you -- you do have the right to
17 represent yourself. But once you do it, it's over. You don't
18 get a chance to change your mind. So you have to make sure you
19 really want to do this and I want to make sure you understand
20 that -- as much about the consequences as I can.

21 But there's no way I can foresee everything, and there'll
22 just be many situations where you say, "Well, you didn't tell
23 me that, Judge," and I have to say to you, "I can't foresee
24 everything."

25 So let me make sure I understand this. Is it your

1 desire, Mr. Brugnara, to dispense with counsel completely and
2 represent yourself?

3 **THE DEFENDANT:** Counsel's already withdrawn, Your Honor,
4 so I'm requesting to proceed representing myself.

5 **THE COURT:** No, no, I can appoint Mr. Boisseau as your
6 counsel and I'm prepared to do that right now, so don't play
7 games with me.

8 Do you want a lawyer? Do you want Mr. Boisseau to come
9 in and represent you, one of the best trial lawyers in
10 California, or do you want to represent yourself?

11 **THE DEFENDANT:** Your Honor, I want to represent myself.
12 I read what Mr. Bornstein gave me and yes, he went over it with
13 me about the *Faretta* conditions and we spent probably 20, 30
14 minutes talking about it and I understand it's unequivocal --
15 unequivocal and I agree to that.

16 **THE COURT:** Well, then I need to go through a lot of
17 things with you now to make sure that you -- it's called a
18 *Faretta* hearing. I'm required to do this. And I want to see
19 what your answers are. And if your answers are equivocal, then
20 that's a problem.

21 All right. So first, I need to put you under oath and
22 you need to take an oath to tell the truth.

23 Please raise your right hand.

24 **THE DEFENDANT:** Before we start that, I'd like to ask the
25 Court one question, though -- because I was impressed by

1 counsel -- is my understanding of -- my interpretation of what
2 I read that Mr. Bornstein gave me, as well as the case
3 precedent, which was actually in this court, Steven Kalar was
4 an associate defender, is that, in fact, there are, under
5 *Faretta*, still due process rights and guarantees that the
6 defendant has that have to be honored, such as, for instance,
7 let's say, the right to have subpoenas issued, for instance,
8 the right to have communication to effectively prepare for
9 trial for the minimum standards set forth by *Faretta*.

10 So I want to make it clear to the Court that I've --

11 **THE COURT:** See, you're being equivocal already. You're
12 making a speech about your rights and then you want to -- so
13 you want to have it both ways.

14 **THE DEFENDANT:** Well, no, I just want to -- is your
15 interpretation -- because I believe --

16 **THE COURT:** You don't have a right to anybody to come
17 help you with subpoenas. You got to do it yourself. If the
18 Court winds up appointing somebody to do that for you, it's a
19 matter of grace, it's a matter of discretion by the Court. And
20 you have no right to it. If you -- you have to prepare the
21 subpoenas on your own, submit them to the Court. We'll try to
22 help you get them served, but you do not have a right to an
23 assistant to -- no. That's what the lawyer is for in the first
24 place.

25 **THE DEFENDANT:** I understand that, Your Honor. I think

1 you misunderstood my -- the angle -- what I was trying to
2 inquire, is that, for instance -- this is more about the
3 conditions of confinement rather than -- I know anything that
4 would be done by any counsel, standby or otherwise, is at the
5 discretion of the Court. I'm talking about nondiscretionary
6 rights that I have. Nondiscretionary rights meaning if I'm in
7 confinement and I don't have a pencil and I ask -- I need a
8 pencil to write a subpoena and I need it mailed to Judge Alsup
9 and they don't follow through with that request and violate my
10 rights to due process -- because it's happened numerous times
11 already in this case where you didn't get the mail for three
12 weeks. And we already had an evidentiary hearing on that.

13 And, you know, that's the situation where I need to
14 understand that there's going to be some sort of due process
15 rights that I have where, as the jail isn't following the
16 procedure --

17 **THE COURT:** Do one of my marshals know the answer to if
18 Mr. Brugnara wants to serve a subpoena for trial on some
19 witness the extent to which the jail or the marshals will give
20 him assistance in supplying him with the form, having it
21 served, and that sort of thing?

22 **THE MARSHAL:** I need to research it with the jail staff.

23 **THE COURT:** We don't know the answer to that.

24 Does the U.S. Attorney know?

25 **MR. KINGSLEY:** I don't know the answer with respect to

1 Alameda County Jail's procedures.

2 **THE COURT:** How about you, Mr. Boisseau?

3 **MR. BOISSEAU:** Well, generally-speaking, I don't check
4 into that. But I'm sure -- the jail will have to give him some
5 privileges, and I believe they do.

6 And the question is whether they'll do it in this case,
7 and I'm sure Mr. Brugnara will come to the Court if they don't.

8 **THE COURT:** Well, the only answer I can give you is this:
9 I don't know the jail's policy; I don't run the jail. And I
10 haven't had this problem with the -- which county are you in?
11 Alameda? So I don't know the answer. But whatever the jail
12 will give you, that's fine with me. But -- and if you have
13 some problem with it, you could come and ask me and I might be
14 able to give you more help with it or not.

15 But the thing is, I can't guarantee that. So right off
16 the bat you're asking me to guarantee you due process. Well,
17 of course I'll give you due process for somebody who's locked
18 up in jail in pretrial the best I can. But, you know, I don't
19 know the answer to that question. I -- whatever the jail
20 policy is and the marshal policy is for somebody representing
21 themselves, that's what you'll get. And --

22 **THE DEFENDANT:** Your Honor, you had the commander,
23 Ms. Sanchez, Commander Sanchez, sit on that and testify at the
24 evidentiary hearing, for instance, that there was a document
25 discovery room. They qualified it, I believe, as the M-13

1 room. But, in fact, there never was one.

2 And it finally came to light that there is none and they
3 brought me the boxes to my cell.

4 So the fact is the commander didn't even know exactly
5 what's going on in the jail.

6 And the problem is, is that I have no way of
7 communicating with you. Meaning, I can't call you. I get out
8 of my cell for a couple of hours a week. I got out this week
9 for three hours, in total, at 10:00 o'clock at night and at
10 11:30 at night.

11 So from a due process standpoint, under my Sixth
12 Amendment right to due -- I don't know, is it 14? -- right to
13 due process, I just want to make sure that I'm just not locked
14 in a dungeon and say, "Okay, well, the trial date is this day,"
15 whether it be April or -- whatever it is, and say, "Okay."

16 Because I have had experiences now for 10 months, 9 and a
17 half months, where I've had all my rights violated.

18 **THE COURT:** Here's what we'll do. Are you free,
19 Mr. Boisseau, to come back tomorrow?

20 **MR. BOISSEAU:** Actually, I'm not. I have a sentencing I
21 can't avoid --

22 **THE COURT:** Thursday?

23 **MR. BOISSEAU:** -- in state court.

24 **THE COURT:** Could you come Thursday?

25 **MR. BOISSEAU:** I could have someone else --

1 **THE COURT:** No, I want you here. I know you're not even
2 appointed yet, but I'd like for some lawyer to be here.

3 **MR. BOISSEAU:** What time would the Court want me --

4 **THE COURT:** What time can I do it?

5 **THE CLERK:** You could do it at -- you could come back at
6 10:00 A.M. or you could come back at noon. We have one CMC at
7 11:00.

8 **THE COURT:** All right. Noon.

9 **THE DEFENDANT:** Your Honor, I want to make the motion
10 today to not lose any time. And I'm not -- I'm just trying to
11 make it clear to the Court --

12 **THE COURT:** But, see, you're being equivocal. You're
13 saying things like --

14 **THE DEFENDANT:** I just made an inquiry of information.

15 **THE COURT:** I'm giving you the best answer I can.

16 **THE DEFENDANT:** Okay. Well, based upon that answer I'm
17 prepared to move forward with the hearing to not waste any
18 court time.

19 **MR. KINGSLEY:** Your Honor.

20 **THE COURT:** Yes.

21 **MR. KINGSLEY:** Regardless of how the *Faretta* hearing
22 went, the Government would probably request, whether
23 Mr. Brugnara wanted it or not, the court-appointed standby
24 counsel, for various reasons.

25 And Mr. Stevens has been in this case for a long time,

1 would seem to be one person who would be well-suited for that.

2 And presumably standby counsel could aid in some of the
3 technical things that Mr. Brugnara wants to do. That's part of
4 the reason for having standby counsel.

5 And I don't offer that because I understand that he's
6 being equivocal; I just think it's a path that we might want to
7 consider either way.

8 **THE COURT:** Once -- that's the cart before the horse. I
9 will consider, later, whether, in my discretion, to appoint
10 either advisory or standby counsel. But the waiver has got to
11 be clear-cut and with the understanding that there is no right
12 to that and no guarantee of that and he should not be waiving
13 his right to counsel on the theory that he's going to have
14 Mr. Stevens in the background helping him.

15 So thank you for bringing that up, but Mr. Brugnara
16 should exclude that from his consideration. Because I'm not
17 going to guarantee that. That would just be one more thing
18 that he claims on appeal that I stabbed him in the back on.

19 **THE DEFENDANT:** Your Honor, just to further that, it says
20 here -- of what Mr. Bornstein gave me -- it says, "It's
21 generally advisable for the Court to appoint standby counsel to
22 assist defendant as needed."

23 **THE COURT:** Yes, yes, I'm aware of that, and I have that
24 in mind as a possibility. But you have been so abusive of the
25 lawyers in this case that I am not prepared to give you any

1 kind of a guarantee that that's going to happen.

2 **THE DEFENDANT:** Your Honor, no attorney, other than
3 Mr. Bornstein, claimed abuse. Steven Kalar, Brandon LaBlanc,
4 James Stevens and Babcock, none of them have ever claimed any
5 abuse or anything along those lines.

6 **THE COURT:** I've heard things that they may not have
7 claimed it, but -- in order to protect you, but the marshals
8 have told me things that have happened. And I know for a
9 certainty that you abused Mr. Babcock.

10 **THE DEFENDANT:** Mr. Babcock didn't meet with me for seven
11 months and I lost seven months of my life because of his
12 ineffectiveness, so --

13 **THE COURT:** Here we go again. All right, look. I'm
14 going to -- we'll have to do this under oath. We've wasted all
15 this time. Raise your right hand, take an oath to tell the
16 truth.

17 **THE CLERK:** Do you solemnly swear that the answers to the
18 questions that you are about to give will be the truth, the
19 whole truth, and nothing but the truth, so help you God?

20 **THE DEFENDANT:** I do.

21 **THE COURT:** All right.

22 What is your name?

23 **THE DEFENDANT:** My name is Luke Brugnara.

24 **THE COURT:** How old are you?

25 **THE DEFENDANT:** Fifty-one.

1 THE COURT: How far did you go in school?

2 THE DEFENDANT: A couple of years -- I have degrees and a
3 couple of years' of law school.

4 THE COURT: Did you finish high school?

5 THE DEFENDANT: Yes.

6 THE COURT: Did you finish college?

7 THE DEFENDANT: Yes.

8 THE COURT: All right. Are you thinking clearly today?

9 THE DEFENDANT: Yes, I am.

10 THE COURT: Are you under the influence of anything?

11 THE DEFENDANT: No, I'm not.

12 THE COURT: Any medicine you should have taken but forgot
13 to take?

14 THE DEFENDANT: No.

15 THE COURT: Are you mentally ill?

16 THE DEFENDANT: No.

17 THE COURT: Are you under -- being treated for mental
18 illness?

19 THE DEFENDANT: No.

20 THE COURT: All right.

21 I'd like for the Government to please summarize the
22 nature of the charges, the maximum penalties, and the sentences
23 that can run concurrently or consecutively and so forth, and I
24 want -- Mr. Brugnara, the reason for this is so you'll know
25 what you're facing as possibilities here.

1 Mr. Kingsley.

2 MR. KINGSLEY: Your Honor, Mr. Brugnara is currently
3 charged in a 9-count indictment. Counts 1 through 4 charge him
4 with wire fraud, in violation of 18 United States Code
5 Section 1343. Count 5 charges him with mail fraud in violation
6 of 18 United States Code Section 1341.

7 The maximum penalties for Counts 1 through 5 are all the
8 same, and that's a term of 20 years' imprisonment, a \$250,000
9 fine or twice the value of the property involved in the
10 offense, whichever is greater, a 3-year term of supervised
11 release, a \$100 mandatory special assessment per count, and
12 restitution to be determined by the Court.

13 Count 6 and 7 charge defendant with making false
14 declarations before a Court, in violation of 18 United States
15 Code Section 1623. The maximum penalties for each of those
16 counts are 5 years' imprisonment, a \$250,000 fine, supervised
17 release term of 3 years, \$100 mandatory special assessment per
18 count, and, again, restitution, to the extent it's applicable.

19 Count 8 charges defendant with escape, in violation of 18
20 United States Code Section 751(a). The maximum penalty for
21 that is five years of imprisonment, \$250,000 fine, 3 years' of
22 supervised release, and \$100 mandatory special assessment.

23 Count 9 charges defendant with contempt of court, in
24 violation of 18 United States Code Section 4013. The penalties
25 of imprisonment and a fine are at the discretion of the Court

1 under the statute, and there is another \$100 mandatory special
2 assessment that applies to the contempt charge.

3 **THE COURT:** How many of those are possibly consecutive,
4 meaning that they can be added together?

5 **MR. KINGSLEY:** They could all be consecutive.

6 **THE COURT:** And if they were maximums and all added
7 together, what is the total prison time that the defendant is
8 looking at?

9 **MR. KINGSLEY:** Well, it would be 115 years for Counts 1
10 through 8, and then, in addition, the discretionary sentence
11 imposed for contempt under Count 9.

12 **THE COURT:** You understand all that, Mr. Brugnara?

13 **THE DEFENDANT:** Yeah, I went over with counsels, multiple
14 counsels, what the guidelines are and what the maximums and
15 minimums. I understand the minimum's zero on all of those as
16 well.

17 **THE COURT:** Well, but I need to make sure you understand
18 the maximums.

19 Did you understand what Government counsel just said?
20 You don't have to agree that that should be done; I'm just
21 saying do you understand that that is what the Government
22 contends are the maximum possibilities.

23 **THE DEFENDANT:** I understand the purpose of what they're
24 trying to do, and I understand what the terms are, yes, as they
25 stated, the maximum, and I also note what the minimums are and

1 what the guidelines are.

2 **THE COURT:** Did you hear and understand what Mr. Kingsley
3 said?

4 **THE DEFENDANT:** I did, Your Honor.

5 **THE COURT:** Thank you.

6 Now I want to talk about timing, first, since I know this
7 is much on your mind. While the Court would try to have a
8 trial on April 27th, you need to be aware that if you go pro se
9 or with a lawyer, whatever, that is not a guarantee and it
10 could change. There could be circumstances that -- for
11 example, the unavailability of a witness. Many things could
12 cause that date to change, despite the best intentions of
13 everyone concerned.

14 So do you understand that the April 27th date is not a
15 guarantee?

16 **THE DEFENDANT:** Yes.

17 **THE COURT:** All right.

18 Now I want to go over with you the -- your entitlement to
19 a lawyer, at no expense to you, all the way through trial, and,
20 for that matter, sentencing. This is based upon your
21 representations to the Court as to your financial conditions,
22 which we have taken at face value. And I want to explain to
23 you what your rights to a lawyer are.

24 You've already had several in this case. We have here
25 now Mr. Boisseau, George Boisseau, who is one of the esteemed

1 members of the bar of this court, tries cases all the time. It
2 would be very hard to find a better lawyer than
3 George Boisseau.

4 And so not only can I say to you that you would get a
5 qualified lawyer from the panel of lawyers who practice in this
6 district, but you would get Mr. Boisseau, who is excellent, and
7 at no expense to you, all the way through sentencing.

8 Do you understand that?

9 **THE DEFENDANT:** Yes.

10 **THE COURT:** All right. This lawyer would help conduct
11 the investigation, review discovery, follow up on leads, and
12 make motions on your behalf.

13 Do you understand that?

14 **THE DEFENDANT:** Yes.

15 **THE COURT:** All right. This lawyer would try to poke
16 holes in the Government's case and cross-examine the witnesses,
17 and he's skilled at doing that, from many prior trials, up
18 against these very -- this very office of the United States
19 Attorney.

20 Do you understand that that's another thing that he would
21 do?

22 **THE DEFENDANT:** Yes.

23 **THE COURT:** And the lawyer would, in my opinion, be
24 excellent, and that you would be foolish to turn down the
25 services of such an excellent lawyer.

1 Do you understand that?

2 That's my advice to you, is that you should not represent
3 yourself but you should go with Mr. Boisseau.

4 Do you understand that?

5 **THE DEFENDANT:** I understand that's your opinion.

6 **THE COURT:** All right. Now, the types of motions that
7 Mr. Boisseau could make on your behalf -- not that -- there are
8 many types. Motions to suppress evidence. I have a feeling
9 you have not a clue where to begin to bring a motion to
10 suppress evidence that would have any merit. He would know
11 where to find the ones that might have merit.

12 Motions to compel information from the Government. You
13 wouldn't have the experience that he has in figuring out how to
14 make those kind of motions.

15 Another type of motion is a motion in limine, meaning a
16 motion that might exclude evidence. Or the Government will
17 bring motions in limine against you and you won't know the
18 proper way in which to respond to those, but Mr. Boisseau would
19 know how to respond to those.

20 Motions to recuse the judge. You brought that up several
21 times in the past. You then say "No, I don't want to do that,"
22 but you never know; you might want to do it. He would know how
23 to prepare such a motion.

24 A motion to exclude experts. I understand there's going
25 to be some experts in this case, at least from having heard the

1 defense side. And maybe the Government will have an expert.

2 And then certainly we got all these problems with the
3 waiver of the attorney-client privilege. And the lawyer will
4 know how to deal with those problems, but you don't have that
5 experience. Even though you have some law school, you're not a
6 lawyer, you didn't make your living in that way, and you will
7 not be able to do as good a job as Mr. Boisseau.

8 Do you understand that?

9 **THE DEFENDANT:** I understand that's your position.

10 **THE COURT:** All right. But do you understand what I've
11 said? You don't have to agree with it, I can't force you to
12 agree with it, but I do have to make sure you understand.

13 **THE DEFENDANT:** I understand what you said.

14 **THE COURT:** All right. There may be times that you might
15 want to make a motion to put something under seal, make a
16 motion for a bill of particulars. Anyway, the lawyer would
17 know how to do it. You, as a non-lawyer, would not have that
18 experience to even understand which motions are likely to
19 succeed.

20 Another -- so let me just make sure you understand that
21 basic point on motion practice --

22 **THE DEFENDANT:** Your Honor, just so you understand it's
23 unequivocal, I understand what all those motions are that you
24 just described. I've also been involved in civil courtrooms
25 and trials for over 20 years. And many of the -- many of those

1 rules and motions apply in civil cases, as you know as well.

2 So I'm very adept in trials. I've never lost a civil
3 trial in over 20 years. And I'm confident that my innocence
4 will be shown in this case and I'll be fully vindicated in a
5 few weeks.

6 **THE COURT:** All right. Now I want to say how a trial
7 works. And I say this in every trial. I say to the jury --
8 this is in a normal trial, where there are lawyers. I say that
9 the lawyers are very important, but nothing that a lawyer ever
10 says is evidence in the case because it's not under oath, it's
11 just asking questions and making points in the courtroom.

12 That's the nature of argument, but it is not evidence.

13 And I make sure the jury understands that what somebody
14 says in their role as an advocate is not evidence. All that is
15 evidence is what is said under oath from the witness stand and
16 the documents and the physical exhibits that come into
17 evidence.

18 So let me make sure I stop there.

19 Do you understand what I've just said?

20 **THE DEFENDANT:** Yes, I understand the rules of evidence,
21 Your Honor.

22 **THE COURT:** All right. So when you are representing
23 yourself in court, I know from experience with you in this case
24 that you will try to argue your point to the jury. Maybe not
25 based on anything that anyone has said, but just start talking

1 in front of the jury about, "Oh, she -- she was drunk that day"
2 or whatever. And I will have to say to the jury -- unless it's
3 something you say under oath from the stand -- that's
4 different -- but if it's just you talking out loud in the
5 courtroom, I have to say to the jury, "Ladies and gentlemen of
6 the jury, what Mr. Brugnara just said is not evidence and you
7 may not treat it as evidence."

8 If you want to lay before the jury something like, "Oh,
9 she was drunk that day; I can smell alcohol on her breath,"
10 which you have said in the case before, then it has to be under
11 oath from the witness stand and subject to the penalties of
12 perjury.

13 Do you understand that?

14 **THE DEFENDANT:** Unless she admits to it when she's being
15 cross-examined.

16 **THE COURT:** Well, she might. That's a good point. She
17 could admit it. But I think, from what I know about the case,
18 is she's probably not going to say that. And then you are
19 going to want to say that out loud, but you may not want to say
20 that under oath. I don't know.

21 What I have to say to the jury is, "If it's not under
22 oath, it's not evidence." And if you start making outbursts in
23 front of the jury, I have to tell them to disregard that and
24 it's not evidence. They can treat it as argument, but they
25 cannot treat it as evidence.

1 And you can't make outbursts to begin with; you have to
2 comply with the normal rules of examination.

3 So let me stop. Do you understand what I'm saying?

4 **THE DEFENDANT:** Yes.

5 **THE COURT:** All right. Now let's talk about normal rules
6 of examination of witnesses.

7 When you are -- you would be asking the questions.

8 What was that woman's name? Ms. Long. Wasn't that her
9 name? Long?

10 **THE DEFENDANT:** Yes.

11 **THE COURT:** Rosemary Long?

12 Let's take her, for example. She's on the stand. It's
13 your turn to cross-examine her.

14 So it would be okay to say to her, "Ms. Long, were you
15 drunk that day?" That would be okay. But what if you were to
16 just turn to the jury and start saying, "I remember you being
17 drunk that day, Ms. Long. I just remember you being drunk.
18 What do you say to that?"

19 That's a totally improper question because you're
20 purporting to testify in front of the jury.

21 **THE DEFENDANT:** I agree.

22 **THE COURT:** You have to just to ask a question, you
23 cannot make a speech, and it cannot be an argumentative
24 question. You couldn't say, for example, "Ms. Long --

25 I don't know. I don't want to give you --

1 You just have to know what an argumentative question is,
2 you need to know what the rules of evidence are for leading
3 questions, for ones that call for speculation, one that has no
4 foundation.

5 All right. So let's say that you want to try to show
6 that she has been arrested for -- been convicted of something
7 in Arkansas. I think that's one of your -- no. Tennessee, I
8 think it was. And she denies it. Are you going to be allowed
9 to put something from the Internet into evidence? No. Of
10 course not. You can't use the Internet as evidence. You would
11 have to have an official -- something official that would
12 satisfy the rules of evidence.

13 It can't be a newspaper article, the rankest of all
14 hearsay. It can't be something off the Internet. Just as
15 rank. It has to be in compliance with the rules of evidence.

16 And so then if you were to blurt out to the jury, "Oh,
17 well, I saw it on the Internet; she's guilty," I would have to
18 say to the jury, "Disregard that. It's not evidence.
19 Mr. Brugnara should not have said that."

20 Do you understand that you have to comply with the rules
21 of evidence?

22 **THE DEFENDANT:** Yes, I do.

23 **THE COURT:** Experts. I don't know how you're going to
24 get an expert from jail. That's your problem. If you want to
25 do this from jail, maybe you can do it. I don't know. But you

1 will be greatly hampered in your ability to investigate this
2 case and to contact witnesses. You will be greatly hampered
3 because you're in jail and the Government is not in jail. But
4 if you had a lawyer who was out of jail, he could be doing all
5 of those things for you.

6 Do you understand that?

7 **THE DEFENDANT:** Mr. Babcock didn't do anything for eight
8 months.

9 **THE COURT:** We're not talking about Mr. Babcock any more;
10 we're talking about Mr. Boisseau.

11 **THE DEFENDANT:** I'm not going down that road any more.
12 It's been, what, three -- three false starts.

13 **THE COURT:** So you're being equivocal. I want you to
14 understand that Mr. Boisseau, he would be using his
15 professional discretion, he would be in a position to do the
16 kind of things that I just mentioned that you would find
17 extremely difficult to do from the jailhouse.

18 Do you understand that?

19 **THE DEFENDANT:** Your Honor -- and again, this goes to the
20 marshals, again, too. I was told that I have access to a phone
21 in the pro se room. There's actually a pro se room at the
22 jail. Obviously --

23 **THE COURT:** I don't know if that -- I have a plan on how
24 to deal with that.

25 **THE DEFENDANT:** I was told, Your Honor, by the lieutenant

1 or the sergeant there what their current protocol is. Their
2 current protocol is whereas you would issue an order that I am
3 pro se I have access to the phone and then I would give you a
4 list of the people that I'm going to call, or to the marshal,
5 and then you can verbally tell them. That way there's no loss
6 of time.

7 **THE COURT:** You want me to take your word for what the
8 sergeant over there -- who I don't even know who it is.

9 All right. Here's what we're going to do on this piece
10 of it. We're going to come back here Thursday at noon, and I
11 want the marshals to bring with them somebody from the jail who
12 can answer these questions and I can count on it. And it's
13 going to be things like what privileges are available to people
14 who are representing themselves in criminal cases, what help
15 does he get on subpoenas --

16 (Addressing the marshal.) You want to make a note?
17 Write this down.

18 What help does he get on subpoenas, access to the
19 telephone, writing materials, access to -- for legal research.
20 This is for somebody who is pro se.

21 And it's got to be somebody who knows how it really works
22 and I can count on and that the witness -- the defendant can
23 count on.

24 So I want that to be explained on the record for the
25 benefit of the defendant so he'll know what the limitations are

1 as well as what his privileges are if he goes pro se. All
2 right?

3 Please make sure it's somebody who knows what they're
4 talking about.

5 Okay? Thank you.

6 All right. Nonetheless, Mr. Brugnara, even if they give
7 you some additional privileges over there on account of you
8 being pro se, there is absolutely no doubt that you will be
9 greatly hampered in your preparing the defense compared to what
10 Mr. Boisseau can do for you on account of you being in jail.

11 Do you understand that?

12 **THE DEFENDANT:** I disagree.

13 **THE COURT:** Well, then how can you disagree with that?
14 Explain to me why it is that -- what you mean by that.

15 **THE DEFENDANT:** I think that I know this case better than
16 anybody. Mr. Bornstein, Babcock, they all said -- I've done
17 nothing for the past five months but read through every piece
18 of discovery about a thousand times. I know this case on the
19 tip of my tongue, I know this case stamped into the back of my
20 hand and my brain, and I understand every facet of this case.
21 And I know exactly the questions I need to ask the witnesses.

22 I only have a handful of witnesses that I'm going to
23 call. It will probably take a couple of days at the most. And
24 this, in my opinion, and all the counts that I've had thus far,
25 is a relatively simple, straightforward case regarding the

1 fraud aspect.

2 And I don't -- I don't see why how it could even drag on
3 two weeks, but so be it.

4 Our witnesses certainly won't take more than a few days,
5 and I don't think Mr. Gasteau [as spoken], even if he had six
6 months, would be as prepared as I am. Because, again, I've had
7 a lot of experience in court. Even though I'm not an attorney,
8 I've assisted my attorney, my civil attorney, in every single
9 case for the last 20 years.

10 And quite frankly -- and Babcock on this case, I wrote
11 half the motions. Okay? So I know what all the motions are.

12 And the only motions I plan on filing prior to trial are
13 ones that have already -- apparently Mr. Bornstein has done
14 one, is the -- there's two. One is the motion to set aside the
15 indictment, which Mr. Bornstein said he was doing, and the
16 other is the motion to eliminate.

17 **THE COURT:** Well, he's not going to do that anymore. Once
18 he's out of the case, he's not going to file a motion.

19 **THE DEFENDANT:** Am I allowed to get the work product that
20 he's completed?

21 **THE COURT:** It's up to him, if he wants to give it to
22 you. I'm not going to order that.

23 **THE DEFENDANT:** If he doesn't, I can certainly write it
24 myself. Those are the only two motions, and I will send out a
25 handful of subpoenas, and I'm ready to go. I can do this trial

1 date sooner than the 27th because my witnesses are going to
2 show. I'm ready to go any time in April, if the U.S. Attorneys
3 are ready to go any time in April.

4 **THE COURT:** All right. Let me continue with some other
5 things.

6 Another thing a lawyer can do for you that you cannot do
7 for yourself is negotiate a plea agreement. Let's say that the
8 lawyer thinks he can negotiate a deal with you. I know you say
9 you're innocent. I don't want you to tell me, get into that.
10 But oftentimes people do negotiate deals, and it's very
11 awkward. It's possible for you to do one on your own behalf,
12 but it's very difficult and it's very awkward.

13 Do you understand that?

14 **THE DEFENDANT:** I spoke to Mr. Babcock about pro se and
15 he told me that you can always negotiate any resolution at any
16 point in time, so, I mean --

17 **THE COURT:** It's not true.

18 **THE DEFENDANT:** What's awkward --

19 If both sides are willing to do such a thing. Obviously,
20 it's got to be two willing parties.

21 But what's awkward is me being in the condition I'm in.
22 That's -- nothing is awkward, once you've been tortured like
23 this.

24 **THE COURT:** The Government is under no obligation to
25 offer you a deal. They're under no obligation to negotiate

1 with you for a deal. You could be begging them to come see you
2 to negotiate a plea deal and they are completely within their
3 rights to say, "Forget it. We're going to trial. We'll find
4 out if you're innocent or not."

5 You have no right, at any time, to negotiate a deal.
6 It's only if both sides want to do it and then they present a
7 deal which is acceptable to the Court. The Court has got to
8 decide whether or not it's acceptable, if it's one that sets a
9 certain penalty.

10 Do you understand what I just said?

11 **THE DEFENDANT:** Yes, Your Honor.

12 And that applies to the attorneys, too; correct?

13 **THE COURT:** Even if you did have an attorney -- you're
14 right about that. If Mr. Boisseau was your lawyer, the
15 Government could still stonewall him and say, "We don't want a
16 deal. No deal in this case."

17 But experience has shown that good lawyers like
18 Mr. Boisseau have a way of working out a deal that the client
19 themselves could never have done. That's where you will be
20 disadvantaged.

21 Do you understand that? Do you at least understand what
22 I'm saying? You don't have to agree with it, but you have to
23 at least acknowledge that what I have said, you understand the
24 point I'm making.

25 **THE DEFENDANT:** I do.

1 **THE COURT:** All right. Someone like Mr. Boisseau has
2 done a lot of trials in this courthouse against these very --
3 this very U.S. Attorney's Office, and he would be good at
4 giving you advice on what the best strategy is. The best
5 strategy for picking a jury. The best strategy for how to --
6 which points to concede and which points not to concede. Any
7 number of points in a trial that I think -- even in a simple
8 trial there are a dozen things that a lawyer and a client have
9 got to decide. And in a more complicated case like this, there
10 are probably a hundred things.

11 And you won't have the benefit of Mr. Boisseau's advice,
12 or anyone; you'd just be on your own.

13 Do you understand that?

14 **THE DEFENDANT:** Yes.

15 **THE COURT:** There'll be issues like what is a permissible
16 opening statement. That's limited to what the facts are going
17 to show in the case. You can't be laying stuff in front of
18 jury that you have no way to prove.

19 You have to -- in fact, if you did that and got away with
20 that much and then later couldn't prove it, it would work to
21 your detriment because the jury would remember you'd promised
22 that information but didn't deliver on it.

23 Do you understand that?

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** And it wouldn't be -- it couldn't cut any

1 figure with me for you to say, "Judge, I've already told the
2 jury X, Y, Z and now you're not letting me prove that." And
3 when I say to you "That's because X, Y, Z, you can't prove it
4 through the way you want to do it and be consistent with the
5 rules of evidence, you got to do it the right way and you don't
6 have a right way to do it," I have to say no to you, and it
7 won't cut any figure that you've already told the jury
8 something you can't prove.

9 Do you understand that?

10 **THE DEFENDANT:** I understand.

11 **THE COURT:** During the trial itself there are many times
12 the lawyer will make a motion, trial-type motion. You will not
13 know when to do that. You might have some vague idea from
14 those civil cases; this is a criminal case.

15 I don't think you've ever represented yourself in a
16 criminal case before, have you?

17 **THE DEFENDANT:** Never been in a criminal case other than
18 the tax case, Your Honor, which didn't go anywhere.

19 **THE COURT:** Well, the endangered species case. Two, that
20 I know of.

21 **THE DEFENDANT:** Well, yeah, that was the -- that was the
22 case I'm referring to.

23 **THE COURT:** All right. So you had two cases. Neither of
24 those went to trial. But my point was you don't have any trial
25 experience in criminal. You may have been in a civil

1 courtroom. Okay. Fair enough. That's good. But it's not the
2 same as being in a criminal case.

3 Do you understand that?

4 **THE DEFENDANT:** I do.

5 **THE COURT:** All right. Mr. Boisseau could follow up on
6 leads, he could dig up evidence, he could talk to witnesses, he
7 could consult with experts -- whether they testify or not, he
8 could go out and find impeachment evidence against the
9 Government's witnesses, he could go get an investigator and
10 have that investigator go out and ask questions, and you will
11 be greatly limited in all of those things.

12 Do you understand that?

13 **THE DEFENDANT:** Yeah. But in all fairness, Your Honor,
14 Mr. Babcock, was, what, seven, eight days away from a trial, so
15 all that preparation work has already been done by prior
16 counsel, with the exception of the subpoenas. And, like I
17 said, we got this case nailed down.

18 **THE COURT:** Well, you may get the benefit of what
19 Mr. Babcock has done before, that's a fair point, but there's
20 still more to be done. And when it comes to doing it, you will
21 be much prejudiced because you're in custody.

22 Do you understand that?

23 **THE DEFENDANT:** Excuse me?

24 **THE COURT:** You will be much prejudiced, disadvantaged,
25 on account of being in jail when it comes to doing the

1 follow-up things of the type, if they were to be required
2 during the course of the trial.

3 **THE DEFENDANT:** I agree, Your Honor. That's why I'd like
4 to hear a bail motion at the conclusion of this *Faretta* motion.

5 **THE COURT:** All right. Now, if you -- first, I've
6 referred all bail motions to the magistrate judge. I think it
7 is highly unlikely that you're going to get out of jail while
8 you're in pretrial on account of your absconding and on account
9 of what happened when you were at the halfway house and
10 violated the conditions for which we had an evidentiary hearing
11 and it was all proven.

12 So if you are making this motion to dispense with counsel
13 on the theory that this is going to lead to a pretrial release,
14 I need to tell you that that is unlikely to happen.

15 Do you at least understand what I'm saying?

16 **THE DEFENDANT:** I understand what you're saying.

17 **THE COURT:** All right. Now, under the constitution you
18 do have the right to represent yourself. You have a right to a
19 lawyer. That's a very important right. And, in my judgment,
20 you should exercise that right and take Mr. Boisseau. However,
21 you also have the right under our constitution to represent
22 yourself. So we -- me as the judge, and us as the system, we
23 have to honor that right. I want you to know that I will honor
24 that right if I believe that you understand the consequences of
25 what I -- at least what I've tried to explain to you and you

1 voluntarily waive that right and that it is clear-cut, no ifs
2 and buts about it.

3 But if you were to do that, you don't get special
4 treatment for your mistakes. If you make a mistake on the
5 rules of evidence or the rules of court, I can't just say, "Oh,
6 we'll give him another shot at it a different way," or, "Okay,
7 we'll give you special treatment that a lawyer would not get
8 just because you're pro se."

9 Do you understand that?

10 **THE DEFENDANT:** Yes. And I'd like to make one other
11 comment. I'm also entitled -- my understanding of the
12 constitution that you referred to is that I'm entitled to hire
13 counsel of my choosing, effective counsel of my choosing not
14 appointed by this Court, which puts us in the conundrum where
15 we're in today where that really hasn't happened.

16 So I want to make sure that's one of my constitutional
17 rights as well.

18 **THE COURT:** Well, all right. Look. That's not answering
19 the point. Look, in the past, yes, you do have the right to
20 hire your own counsel. You've told us that you're broke and
21 can't afford counsel. That's why we're appointing counsel for
22 you. And so far you didn't bring in counsel and I did give you
23 a few days -- until you violated conditions at the halfway
24 house -- to go get counsel.

25 **THE DEFENDANT:** But, Your Honor, you also know, just to

1 clarify the financial condition, the first question I asked
2 probation and they asked me when I was on probation filling out
3 these monthly statements, I said, "If I had the access to
4 borrow money --

5 And this was asked to Ms. Jennifer James. I already
6 attested to this in open court. Untranscribed. I said, "If I
7 can borrow millions of dollars, do I need to cite that on my
8 report here?"

9 She said, "No. It's just income."

10 Mr. Sprague asked me the same question.

11 "So, Mr. Brugnara. So you can borrow millions of
12 dollars?"

13 I said, "Yes, I can."

14 "All right. So why don't you pay the million-nine?"

15 I said, "Because I don't have to. That has to come from
16 income."

17 So if I have the ability to borrow the money and my right
18 to hiring independent counsel of my choosing -- effective
19 counsel of my choosing -- is foreclosed because this Court
20 doesn't give me reasonable bail conditions to access those
21 lenders -- because when I had bail, the only person I could
22 contact was Mr. Erik Babcock under the rule that you set on the
23 restrictions.

24 And you allowed me to go meet with John Keker and Lassart
25 and Mazzucco, but not to call them. The only person who could

1 call them was Mr. Alan Lew [phonetic].

2 Well, both of those attorneys that are also very esteemed
3 attorneys wanted to represent me. In fact, Mr. Keker said he
4 would take the case -- to my wife. Wanted \$500,000.

5 Lassart and Mazzucco, Tippy Mazzucco, wanted -- we didn't
6 finalize a number, but it was in the hundreds of thousands of
7 dollars.

8 So I told Mr. Babcock, "Well, I need to talk to my
9 lenders to borrow those funds to pay those men."

10 I was taken into custody, not coincidentally, that
11 afternoon. That afternoon. After I spent 40 -- or 20 hours
12 with Mazzucco and Lassart. They invested 20 hours preparing to
13 take on the case. A piece.

14 **THE COURT:** You were taken into custody for violating the
15 terms of the release and it had nothing to do with where you
16 were in the process of retaining counsel. And I'm sorry that
17 it didn't work out for you.

18 **THE DEFENDANT:** I disagree. I think it was done on
19 purpose by the U.S. Attorneys in concert with the pretrial
20 services, that it was done on the afternoon I was set to hire
21 these private counsels, and it was too coincidental.

22 And the fact of the matter is their motion to revoke the
23 bail was also coincidentally filed the day I was having the
24 bail conditions expanded to include me going back to Seacliff,
25 and they filed their motion as a retaliation on the

1 hyper-technical default of speaking on a personal phone call,
2 which has no bearing whatsoever on any consequences or
3 dangerousness.

4 You know, the fact of the matter --

5 **THE COURT:** Wait. Wait. We're off the subject.

6 **THE DEFENDANT:** No, it's not. Because you said I have a
7 right to counsel --

8 **THE COURT:** You have a right to counsel.

9 **THE DEFENDANT:** -- and I wanted to make sure that I have
10 a right to a counsel of my choosing.

11 **THE COURT:** If you could get a lawyer to come in and
12 represent you, either a paid lawyer like John Keker, or if he
13 wanted to come in and represent you for free, this is still
14 America and you have that right. But you have not done it so
15 far. And the fact that you're in jail is your fault and it is
16 not anyone else's fault.

17 And so there. You've made your point; I've made my
18 point.

19 **THE DEFENDANT:** But, Your Honor, I want this Court to
20 hear, like I said, the fact is you could put forth reasonable
21 conditions that foreclose any concerns that you have and still
22 guarantee a fair trial, without these sort of impediments, by
23 structuring reasonable bail conditions under the Bail Reform
24 Act, which mandates and requires you to put reasonable -- not
25 guaranteed -- conditions. If a million dollar secured bond is

1 posted for any breach of the conditions, that would be a
2 huge -- a huge deterrent for breaching any condition.

3 The fact is that the trial's forthcoming in a few weeks.
4 Just to get sleep in my own bed and have a few normal meals. I
5 haven't slept in 10 months.

6 And here's an example at the jail. Mr. Joe, the marshal,
7 can go say, "Well, the jail rules and regulations" -- and I
8 read it last night, I'll bring it on Tuesday -- says "the TVs
9 have to be off at 11:00 P.M." I can even show you video. TV's
10 off at 11:00 P.M.

11 The only person who can turn the TV off at 11:00 is the
12 guard. The deputy.

13 Not one TV is turned off at 10:00 P.M. out of 32 pods in
14 that building.

15 They don't follow the rules.

16 Okay, now. You'll say, "Well, let's go to
17 San Francisco."

18 San Francisco is even worse. You sit under a light
19 that's brighter than that. I say, "Does somebody turn off the
20 light?"

21 **THE COURT:** Mr. Brugnara.

22 **THE DEFENDANT:** Your Honor, their TV's on 24 hours a day.

23 **THE COURT:** I'm sure that being in jail is not good.

24 **THE DEFENDANT:** It's horrible.

25 **THE COURT:** Let's say it's horrible. Can I tell you

1 something?

2 **THE DEFENDANT:** (Indiscernible - simultaneous speaking)
3 seven fights in my pod, which is the size of your podium up
4 there. Maybe a little bit --

5 Seven fights in the first 24 hours. Here I am, in with
6 murderers, bank robbers, and drug dealers. I'm looking at this
7 saying, "This is surreal. This is beyond --

8 I mean, it's insanity.

9 **THE COURT:** Can I tell you? Whatever the conditions are
10 there, you're going to be stuck with it while you're preparing
11 for trial.

12 **THE DEFENDANT:** And I think that's stubborn. Because if
13 you listen to what the Bail Reform Act says, you have to give
14 me bail --

15 **THE COURT:** You've already done that, made that argument
16 to the Court of Appeals, and they turned you down.

17 **MR. BOISSEAU:** The Court of Appeals was silent on the
18 issue of dangerousness; they only said if there was a breach of
19 the conditions.

20 **THE COURT:** Here's another great thing you can do when
21 you're in jail. You can make another writ. You can write it
22 out by hand and send it over there and see if they agree with
23 you.

24 **THE DEFENDANT:** Judge Goodwin, who was also in the tax
25 appeal -- Bob King filed two-feet-thick on the tax case.

1 Goodwin's response was two sentences long, okay. "No,"
2 basically. That's it.

3 I asked Bob King, "Well, isn't there going to be a
4 multi-page response on why? He said no, they don't have to
5 give a --

6 **THE COURT:** So Mr. Brugnara, if you want to waste your
7 time --

8 **THE DEFENDANT:** I would never waste my time ever on an
9 appeal again.

10 **THE COURT:** Then what I'll tell you is this. As far as
11 I'm concerned, you're going to be in jail until the trial is
12 over. It would take a miracle to convince me otherwise, in
13 light of your absconding. And I'm trying to make the point to
14 you, if you think that you can go pro se and somehow work that
15 into pretrial release, forget it. You are going to have all of
16 those adverse conditions.

17 That's exactly why you are making a mistake to reject
18 Mr. Boisseau. You should not be trying to represent yourself.
19 You're going to be stuck with that.

20 Now you may not agree with it, but do you understand what
21 I am saying? That you will be stuck with being in jail and
22 preparing for trial?

23 **THE DEFENDANT:** Notwithstanding, I still would like this
24 Court to hear the bail motion after this.

25 **THE COURT:** It will be heard by the magistrate judge with

1 appeals to me.

2 THE DEFENDANT: Magistrate Cousins doesn't work in this
3 building anymore; he's in San Jose.

4 THE COURT: He'll come back. He's promised me he'll come
5 back for the hearing.

6 THE DEFENDANT: And he does exactly what the
7 U.S. Attorneys tell him.

8 THE COURT: See. There you go again.

9 THE DEFENDANT: Your Honor, she was in the same office
10 when I -- this WHA 222 tax case was in that office.

11 THE COURT: It doesn't matter. That's a bogus point.
12 That does not matter.

13 THE DEFENDANT: So if he has a desk next to Mr. Sprague
14 and Mr. Sprague's prosecuting this case and Mr. Newman was
15 working on the tax case, you don't think that there's a
16 conflict there?

17 THE COURT: They don't have -- this is not like some
18 clerical office where they each have offices next to each
19 other. See, that's just bogus.

20 (Indiscernible - simultaneous speaking.)

21 THE REPORTER: I'm sorry, Judge, I can only --

22 THE COURT: Mr. Brugnara, the Court of Appeals makes me
23 explain this to you and all you're doing is arguing with me.

24 I can't let you represent yourself --

25 THE DEFENDANT: (Indiscernible - simultaneous speaking.)

1 **THE COURT:** -- unless you tell me --

2 Look. You can bring a motion in front of the magistrate
3 judge with an appeal to me and we will decide it on the merits.
4 But because I know that -- how I feel, that you absconded and
5 that you violated those conditions -- we even had an
6 evidentiary hearing on it, I've already -- I've already
7 basically made up my mind that -- you got an uphill battle with
8 me. I am not going to release you, as far as I'm concerned.
9 You should be thinking "If I'm going to go represent myself,
10 I'm going to be in jail while I do it."

11 Now, do you understand what I'm saying? You don't have
12 to say that I'm right; just tell me that you understand.

13 **THE DEFENDANT:** Well, I don't think that's fair for you
14 to pre-judge before you hear a motion or an appeal from the
15 magistrate. And I would ask, at least, that Judge Spero can
16 hear the motion because he was the original magistrate in the
17 tax case and he's familiar with this case.

18 **THE COURT:** You understand that I'm telling you that you
19 can't count on any of that and that probably you're going to --
20 very likely, highly likely, you're going to be in jail for the
21 entire duration?

22 **THE DEFENDANT:** I believe it's highly likely but I also
23 believe in justice and I believe that I'm entitled to bail.

24 I've seen murderers and bank robbers getting bail over
25 the last 10 months. And if you think that they're entitled to

1 bail, blowing people's brains out and robbing banks and little
2 old ladies and dealing drugs and I'm not entitled to bail, then
3 there's a disconnect with the justice system.

4 **THE COURT:** I didn't do that. I don't know what judge
5 did that, but it wasn't me.

6 So do you understand that I am saying to you that if --
7 you will be in custody while you are preparing for trial and
8 during the trial itself and you can say, "I think it's unfair,
9 I don't like it, but I understand what you're saying"?

10 **THE DEFENDANT:** I think it's -- it will help level the
11 playing field because I'm innocent of these ridiculous
12 charges --

13 **THE COURT:** Do you understand what I'm telling you?

14 **THE DEFENDANT:** -- and I understand that the Court needs
15 to balance out the playing field by not allowing me to sleep
16 and restricting me. But I'm still going to be found innocent
17 because I didn't do anything and I'm going to be vindicated.

18 But, you know, you can tie both arms behind by back,
19 deprive me of sleep, shine the light in my eyes for another few
20 weeks, or another month. The outcome is going to be the same
21 because the facts are what they are. There's no fraud.

22 **THE COURT:** All right. Mr. Brugnara, I know you disagree
23 with my view about whether you should be in pretrial detention,
24 but do you at least understand what I have said to you?

25 **THE DEFENDANT:** I think it's a sin. I think it's beyond

1 sad. I think it's a sin what you're doing to me and my family,
2 keeping me in pretrial detention.

3 If I lost a trial -- you can do what you want, but
4 pretrial, I think this is -- it's not right. And I think you
5 know it's not right. That's why you tried to bend over
6 backwards to placate everyone with those bail conditions and
7 furlough conditions.

8 But you got to remember I never even complained when I
9 didn't see my children at Christmas, when you made it clear you
10 wanted me to see my children at Christmas on the holiday visit.
11 And these U.S. Attorneys over here, while he wants to visit
12 his -- have his, you know, see his new child being born and
13 visit his family, I didn't even get to see my children for one
14 hour after this Court required because they wouldn't sign the
15 stipulation because they were missing in action.

16 **THE COURT:** All right. We're going to bring this to an
17 end because you're not giving an answer to my question.

18 **THE DEFENDANT:** I understand, Your Honor. I understand.

19 **THE COURT:** You understand what I said? That you would
20 be in pretrial detention, in all likelihood, and -- even if you
21 think it's unfair and a sin. Do you understand that?

22 **THE DEFENDANT:** Pending what happens with the magistrate
23 and you on an appeal, if that comes to that, I suppose so.

24 **THE COURT:** All right. I think I've reached a point
25 where I need to have the jail personnel here to explain what

1 the privileges are that a pro se defendant has, and I'd like to
2 get -- where's my marshal? I'd like to -- are you going -- are
3 you now in charge? All right.

4 You will have somebody here who can explain if there are
5 any special privileges the marshals will allow a pro se
6 defendant to have while they're in trial or preparing for
7 trial, and we will resume this hearing at noon on Thursday.

8 Right, Dawn?

9 **THE CLERK:** Yes. Correct, Your Honor.

10 **THE COURT:** I want the Government to evaluate the
11 adequacy of the colloquy so far. I'm going to do the same, but
12 I may see how it goes. I want to make sure that I have done my
13 very best to do what the constitution requires, the Ninth
14 Circuit, by way of colloquy.

15 Mr. Boisseau, you can be back. There's no need for
16 Mr. Bornstein to be back. Mr. Stevens, you should come back
17 next time because you haven't been relieved yet.

18 But where this is headed, I want to make clear you're not
19 even entitled to Mr. Stevens. When you're pro se, you're pro
20 se. You understand that?

21 **THE DEFENDANT:** Oh, I understand.

22 **THE COURT:** All right. So we will resume right here on
23 Thursday on the *Faretta* thing. And my plan is to hear from the
24 marshal, the jail, do whatever follow-up we need to do, and
25 then make a decision then.

1 And my further plan is -- this is no guarantee, but since
2 the Government is promising, their very best, to be ready on
3 April 27th, that's what I would like to do. I would like to
4 try this case on April 27th. Start trying it on April 27th.

5 So unless I hear more right now, Mr. Boisseau, I'm going
6 to let you specially appear today and specially appear next
7 week.

8 **MR. BOISSEAU:** This Thursday?

9 **THE COURT:** I'm sorry. Thursday. Yes.

10 **MR. BOISSEAU:** I'll be here. Thank you.

11 **THE COURT:** All right.

12 **MR. WALDINGER:** Your Honor, I'll be here as well. I do
13 have an appearance in front of Judge Orrick at 1:30 that I need
14 to go to. It's a sentencing that I need to cover. But
15 Mr. Kingsley will be here for the duration on Thursday.

16 **THE COURT:** Thank you. See you then.

17 (Proceedings adjourned at 12:42 P.M.)
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CERTIFICATE OF CONTRACT REPORTER

I, Kelly Lee Polvi, certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and that the transcript format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 24th day of March, 2015.



Kelly Lee Polvi
CA CSR No. 6389
Registered Merit Reporter
Federal Certified Realtime Reporter